Subcommittee on Interim Strong Mayor
Staff Report on the Veto by James Ingram

The term "veto" is Latin for "I forbid" and is one of those governmental innovations which city charters derive from their national constitutional forbears. A veto that can be overridden by the same majority that enacted an ordinance is not a real veto.

The debates by which the Founders of the American Constitution created that document indicated that they wanted a real veto. In fact, they seriously deliberated over an absolute negative, which the Congress would not have been authorized to over-ride. In the Federalist Papers explaining the veto provisions of the Constitution, the Founders made it clear that they saw a real veto as a critical safeguard on the interests of the people.

The founders of the Constitution made a veto override difficult by requiring achievement of a 2/3 margin in both houses. A 2/3 margin in two houses that were purposely selected in maximally different ways to increase diversity and problematize faction is arguably more difficult to achieve than a ¾ margin in one legislative body. James Madison made the case for the benefits of strong checks in Federalist Papers 10 and 51.

The Federalist Papers on the Importance of a real veto

Federalist Paper #73 went to great lengths to make the case for the existence of a real veto:

"The last of the requisites to energy, which have been enumerated, are competent powers. Let us proceed to consider those which are proposed to be vested in the President of the United States.

The first thing that offers itself to our observation, is the qualified negative of the President upon the acts or resolutions of the two houses of the legislature; or, in other words, his power of returning all bills with objections, to have the effect of preventing their becoming laws, unless they should afterwards be ratified by two thirds of each of the component members of the legislative body.

The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already suggested and repeated; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional arms for its own defense, has been inferred and proved. From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the Executive, upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body to invade the rights of the Executive, the rules of just reasoning and

theoretic propriety would of themselves teach us, that the one ought not to be left to the mercy of the other, but ought to possess a constitutional and effectual power of selfdefense.

But the power in question has a further use. It not only serves as a shield to the Executive, but it furnishes an additional security against the enaction of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

The propriety of a negative has, upon some occasions, been combated by an observation, that it was not to be presumed a single man would possess more virtue and wisdom than a number of men; and that unless this presumption should be entertained, it would be improper to give the executive magistrate any species of control over the legislative body. But this observation, when examined, will appear rather specious than solid. The propriety of the thing does not turn upon the supposition of superior wisdom or virtue in the Executive, but upon the supposition that the legislature will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of other members of the government; that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on maturer reflexion, would condemn. The primary inducement to conferring the power in question upon the Executive is, to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design. The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest. It is far less probable, that culpable views of any kind should infect all the parts of the government at the same moment and in relation to the same object, than that they should by turns govern and mislead every one of them.

It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they happen to be at any given period, as much more likely to do good than harm; because it is favorable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws, will be amply compensated by the advantage of preventing a number of bad ones.

Nor is this all. The superior weight and influence of the legislative body in a free government, and the hazard to the Executive in a trial of strength with that body, afford a satisfactory security that the negative would generally be employed with great caution; and there would oftener be room for a charge of timidity than of rashness in the exercise

of it. A king of Great Britain, with all his train of sovereign attributes, and with all the influence he draws from a thousand sources, would, at this day, hesitate to put a negative upon the joint resolutions of the two houses of Parliament. He would not fail to exert the utmost resources of that influence to strangle a measure disagreeable to him, in its progress to the throne, to avoid being reduced to the dilemma of permitting it to take effect, or of risking the displeasure of the nation by an opposition to the sense of the legislative body. Nor is it probable, that he would ultimately venture to exert his prerogatives, but in a case of manifest propriety, or extreme necessity. All well-informed men in that kingdom will accede to the justness of this remark. A very considerable period has elapsed since the negative of the crown has been exercised.

If a magistrate so powerful and so well fortified as a British monarch, would have scruples about the exercise of the power under consideration, how much greater caution may be reasonably expected in a President of the United States, clothed for the short period of four years with the executive authority of a government wholly and purely republican?

It is evident that there would be greater danger of his not using his power when necessary, than of his using it too often, or too much. An argument, indeed, against its expediency, has been drawn from this very source. It has been represented, on this account, as a power odious in appearance, useless in practice. But it will not follow, that because it might be rarely exercised, it would never be exercised. In the case for which it is chiefly designed, that of an immediate attack upon the constitutional rights of the Executive, or in a case in which the public good was evidently and palpably sacrificed, a man of tolerable firmness would avail himself of his constitutional means of defense, and would listen to the admonitions of duty and responsibility. In the former supposition, his fortitude would be stimulated by his immediate interest in the power of his office; in the latter, by the probability of the sanction of his constituents, who, though they would naturally incline to the legislative body in a doubtful case, would hardly suffer their partiality to delude them in a very plain case. I speak now with an eye to a magistrate possessing only a common share of firmness. There are men who, under any circumstances, will have the courage to do their duty at every hazard.

But the convention have pursued a mean in this business, which will both facilitate the exercise of the power vested in this respect in the executive magistrate, and make its efficacy to depend on the sense of a considerable part of the legislative body. Instead of an absolute negative, it is proposed to give the Executive the qualified negative already described. This is a power which would be much more readily exercised than the other. A man who might be afraid to defeat a law by his single VETO, might not scruple to return it for reconsideration; subject to being finally rejected only in the event of more than one third of each house concurring in the sufficiency of his objections. He would be encouraged by the reflection, that if his opposition should prevail, it would embark in it a very respectable proportion of the legislative body, whose influence would be united with his in supporting the propriety of his conduct in the public opinion. A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or

disapproved by those to whom they are addressed. In proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason, it may in practice be found more effectual. It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in spite of the counterposing weight of the Executive. It is at any rate far less probable that this should be the case, than that such views should taint the resolutions and conduct of a bare majority. A power of this nature in the Executive, will often have a silent and unperceived, though forcible, operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared.

This qualified negative, as has been elsewhere remarked, is in this State vested in a council, consisting of the governor, with the chancellor and judges of the Supreme Court, or any two of them. It has been freely employed upon a variety of occasions, and frequently with success. And its utility has become so apparent, that persons who, in compiling the Constitution, were violent opposers of it, have from experience become its declared admirers.[1]

I have in another place remarked, that the convention, in the formation of this part of their plan, had departed from the model of the constitution of this State, in favor of that of Massachusetts. Two strong reasons may be imagined for this preference. One is that the judges, who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacities; the other is that by being often associated with the Executive, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distinct from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the Executive."

The ¾ Veto Override in a city charter

The importance of the veto was clear to the founders of the United States Constitution. In fact, an early session of the United States Congress even established majorities greater than 2/3 for a city. In 1800, Congress acted to provide a charter for the newly established federal city of Washington, D.C. In the law they passed, which was Congress's first action to create a city charter, the legislators provided for a ¾ margin for override of a mayor's veto. The fact that the American legislature would act to create an extraordinary majority veto override process is evidence of their appreciation of the role of the veto and override nationally.

"AN EARLY EXPERIENCE WITH LIMITED HOME RULE 1800-1871

[1] Mr. Abraham Yates, a warm opponent of the plan of the convention is of this number.

Congress arrived in the capital in 1800 and realized that decisions had to be made concerning the governance of the people of Washington. With a law passed in 1801, the federal government officially assumed control over the land ceded to the federal district, which included Washington and Alexandria Counties and the cities of Washington, Georgetown and Alexandria.

Form of Government
In addition, through this legislation, Congress:
* appointed three commissioners to govern the city (the same commissioners who had been hired by George Washington to build the capital);
* established a circuit court that called for a chief justice and two associates who held four sessions per year and followed the procedures of the state (V.A. or M.D.) in which the county was located;
* established levy courts, made up of presidentially appointed officials, outside the city limits to assess taxes and manage local affairs;
* called for presidential appointment of marshals and justices of the peace;
* stated that District residents did not have the right to vote in national elections or have representation in Congress.

Within the District of Columbia, the cities of Georgetown and Alexandria continued governing themselves under their own established charters. In 1802, Congress approved a charter to establish a government for the city of Washington within the District.

The charter included provisions for:
* a mayor appointed by the president;
* the mayor to appoint all other offices;
* a twelve-member council elected by the voters with the authority to pass laws and impose taxes;
* all legislation passed by the Council to be sent to the Mayor for approval;
* the Council could override the Mayor's veto by a three-fourths vote..."[2]

The Veto and the States

All 50 states accord their governor the veto power. In 1788, only two states had done so, Massachusetts and New York. The President of the United States was patterned after the powers of the Governor of New York, which were expounded to the Constitutional Convention by delegate James Wilson. Wilson attempted to persuade the Convention to adopt an absolute negative at the Constitutional Convention of June 4, 1787. The founders compromised on a 2/3 veto override, although a number of them would have preferred a larger margin.

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[2] District of Columbia Home Rule Charter Review *in collaboration with* the Federal City Council, "The District of Columbia as a National Capital and the District of Columbia as a Place to Live: A History of Local Governance to Present Day," *BACKGROUND BRIEFING REPORT, Prepared by Georgetown University's Graduate Public Policy Program* http://www.narpac.org/ITXGU03A.HTM

Presently, 44 of the 50 United States require a larger margin to override a governor's veto than was required to pass a law in the first place. Alabama, Arkansas and Kentucky do not require a majority of total membership of both houses to pass a law. Therefore, when these states require a majority of the total membership of both houses to override a governor's veto, this is a larger number than were required to pass the law in the first place. The other three states that allow a governor's veto to be overridden by a majority of both houses—Indiana, Tennessee and West Virginia—require a majority of both houses to pass their laws in the first place.

I have been researching the charters of large cities in California and the United States, and have not found one that bothers to accord its mayor a veto, and then allows that veto to be overridden by the same margin that passed an ordinance in the first place. Under the pre-Prop F era, it took the Mayor and four Council-members to prevent ill-considered actions from being taken. It still takes the Mayor's veto and four Council-members to sustain it to stop ill-considered actions. Did Prop F really create a veto at all?

A veto is not a real veto unless it requires the legislative body to achieve a larger margin than passage of the law required in the first place. That is just a requirement of council reconsideration.

Reconsideration versus Veto

France allows its president to require the Parliament to reconsider, but does not establish a veto or an override. This imperfect process can lead to stalemate, as proposed legislation cycles between the legislative and executive branch with no result. India requires its President to assent to all money bills, but allows this officer some authority over all other bills. If the President does not agree to regular bills, he or she may ask Parliament to reconsider. If both houses of Parliament pass the bill without any changes by majority, then the President must sign the bill. However, the Constitution does not set a time limit on Presidential approval, and thus the country's presidents have used it as a kind of pocket veto to block objectionable laws. Flawed veto processes carry their own set of consequences, leading to stalemate or obstruction. Both France and India have experienced difficulties due to the failure to create a proper veto and override process.

Whether in the case of cities, states or countries, the issue of the veto is critical to executive-legislative relations. The absence of a complete veto and override process is a matter of good government. For a real veto to exist, the legislature must be required to muster a larger margin than initially required for the passage of a law.

Examples of ¾ veto overrides in the LA Charter

The Los Angeles Charter requires the Council to achieve a ¾ margin when that body acts to override the Mayor's and the City Planning Commission's disapproval of amendments to the General Plan. There are also four other instances in which the Los Angeles Charter mandates a three-quarters veto override margin:

"Sec. 250. Procedure for Adoption of Ordinances.

(a) Introduction and Passage. No ordinance shall be passed finally on the day it is introduced, but it shall be held over for one week, unless approved by unanimous vote of all the members of the Council present, provided there is not less than three-fourths of all the members present.

(b) Presentation to Mayor. Every ordinance passed by the Council shall, before it becomes effective, be signed by the City Clerk or other person authorized by the Council, and be presented to the Mayor for approval and signature. If the Mayor does not approve the ordinance, the Mayor shall endorse on it the date of its presentation to him or her, and return it to the City Clerk with a written statement of objections to the ordinance. The City Clerk shall endorse on the ordinance the date of its return to him or her. If the Mayor does not approve or veto an ordinance in accordance with this section within ten days after its presentation to him or her, the ordinance shall be as effective as if signed by the Mayor.

(c) Override by Council. The City Clerk shall present the ordinance, with the objections of the Mayor, at the first Council meeting after the Clerk has received the Mayor's objections. The Council may pass any ordinance over the veto of the Mayor within 45 days after the objections of the Mayor are presented to the Council, by two-thirds vote of the Council or by three-fourths vote where two-thirds vote or more was required for passage of the original ordinance."

"Sec. 514. Transfer of Powers.

(a) Charter Created Powers and Duties. The Mayor may propose the transfer of any of the powers, duties and functions of the departments, offices and boards of the City set forth in the Charter to another department, office or board created by the Charter or by ordinance. The transfer shall be effective if approved by ordinance adopted by a two-thirds vote of the Council, or if the Council fails to disapprove the matter within 45 days after submittal by the Mayor of all documents necessary to accomplish the transfer, including the proposed ordinance transferring powers, duties or functions, and any related ordinances or resolutions concerning personnel or funds affected by the transfer. The Council on its own initiative may, by ordinance, adopted by a two-thirds vote of the Council, subject to the veto of the Mayor or by a three-fourths vote of the Council over the veto of the Mayor, make any such transfer.

(b) Exceptions. The power of the Mayor and Council to act as provided in this section shall not extend to:

(1) Elected Offices;

(2) Proprietary Departments;

(3) Los Angeles City Employees' Retirement System;

(4) Department of Fire and Police Pensions;

(5) City Ethics Commission;

(6) The disciplinary functions of the Fire Department and the Police Department as contained in Sections 1060 and 1070; and

(7) The Police Department and the Fire Department, if the transfer or consolidation would significantly alter or affect the primary purpose or character of the departments.

(c) Ordinance Created Powers and Duties. Powers, duties and functions established by ordinance may be transferred or eliminated by an ordinance proposed by the Mayor or

Council. If the Mayor proposes a transfer or elimination, the action shall be effective if approved by ordinance adopted by a majority vote of the Council, or if the Council fails to disapprove the matter within 45 days after submittal by the Mayor of all documents necessary to accomplish the transfer or elimination, including the proposed ordinance transferring powers, duties or functions, and any related ordinances or resolutions concerning personnel or funds affected by the transfer or elimination."

"Sec. 555. General Plan - Procedures for Adoption.
Procedures pertaining to the preparation, consideration, adoption and amendment of the General Plan, or any of its elements or parts, shall be prescribed by ordinance, subject to the requirements of this section.
(a) Amendment in Whole or in Part. The General Plan may be amended in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that the part or area involved has significant social, economic or physical identity.
(b) Initiation of Amendments. The Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan. The Director of Planning shall make a report and recommendation on all proposed amendments. Prior to Council action, the proposed amendment shall be referred to the City Planning Commission for its recommendation and then to the Mayor for his or her recommendation.
(c) Commission and Mayoral Recommendations. The City Planning Commission shall hold a public hearing before making any recommendation on a proposed amendment to the General Plan and shall act within the time specified by ordinance. If the Commission recommends disapproval of an amendment initiated by the Commission, it shall report its decision to the Council and Mayor. After the Commission recommends approval of an amendment initiated by the Commission, or takes action concerning an amendment initiated by the Director or the Council, the Commission shall forward its recommendation to the Mayor. The Mayor shall have 30 days to forward his or her recommendation to the Council regarding the proposed amendment to the General Plan. If either the City Planning Commission or the Mayor does not act within the time specified, the Commission or Mayor shall be deemed to have recommended approval of the proposed amendment.
(d) Council Action. The Council shall conduct a public hearing before taking action on a proposed amendment to the General Plan.
If the Council proposes any modification to the amendment approved by the City Planning Commission, that proposed modification shall be referred to the City Planning Commission and the Mayor for their recommendations. The City Planning Commission and the Mayor shall review any modification made by the Council and shall make their recommendation on the modification to the Council in accordance with subsection (c) above.
If no modifications are proposed by the Council, or after receipt of the Mayor's and City Planning Commission's recommendations on any proposed modification, or the expiration of their time to act, the Council shall adopt or reject the proposed amendment by resolution within the time specified by ordinance.

(e) Votes Necessary for Adoption. If both the City Planning Commission and the Mayor recommend approval of a proposed amendment, the Council may adopt the amendment by a majority vote. If either the City Planning Commission or the Mayor recommends the disapproval of a proposed amendment, the Council may adopt the amendment only by a two-thirds vote. If both the City Planning Commission and the Mayor recommend the disapproval of a proposed amendment, the Council may adopt the amendment only by a three-fourths vote. If the Council proposes a modification of an amendment, the recommendations of the Commission and the Mayor on the modification shall affect only that modification."

"Sec. 607. Limitations on Franchises, Concessions, Permits, Licenses and Leases. Franchises, concessions, permits, licenses and leases shall be subject to further limitations specified in this Article for each Proprietary Department and the following:
(a) Length. The term shall not exceed 30 years or the term specified by applicable federal or state law, whichever is less. If Council makes a finding that a term longer than 30 years would be in the best interest of the City, Council may, by a two-thirds vote, subject to Mayoral veto, or three-fourths vote over the veto of the Mayor, authorize a term up to 50 years, or the maximum period allowed by any federal or state law, whichever is less.
(b) Compensation Adjustments. Every franchise, concession, permit, license, or lease shall include a procedure to adjust the compensation periodically but in no case shall the period between adjustments exceed five years."

"Sec. 680. Other Enterprises.
(a) Entry into Any Other Business. Notwithstanding any provision in the Charter to the contrary, the Council, upon making a finding that it is in the best interests of the City, may by ordinance authorize the department to engage in any lawful business enterprise that is in the best interests of the City's inhabitants and that will not interfere with the department's role as a provider of water and power to the City's inhabitants.
(b) Entry into Public Utility Competition. Without limiting the provisions of subsection (a), the Council may by ordinance adopted by a two-thirds vote and approved by the Mayor, or passed by three-fourths vote of the Council over the veto of the Mayor, authorize the department to provide electricity service or any other service, which may be provided by another utility or direct competitor to any person or entity, whether situated inside or outside of the City or the State of California.
(c) Prohibition of Entry into Water Service Outside Service Area. Water service or products that would be provided outside the department's retail service area are specifically excluded from the provisions of this section.
(d) No Limitation on Department. Nothing in this section limits any right, power or authority granted to the department or to the board elsewhere in the Charter."

The 2/3 figure is not magic

Although many city charters provide for a 2/3 override process, typically the numbers do not allow an exact 2/3 margin vote. Consequently, the override often requires more than 2/3 to override. For example, in Philadelphia there are 17 Council members, and it takes

2/3 to override a Mayoral veto. The smallest number that is 2/3 of 17 is 12, which means that the override actually requires a 71% vote in that city. Much the same is the case in San Francisco, where a veto override of a veto on a regular ordinance requires a 2/3 vote. The smallest number that is 2/3 of 11 is 8; thus, the veto override requires a 73% vote by the Board of Supervisors.

Like Philadelphia and San Francisco, and many other cities, San Diego requires a larger than 51% margin to pass an ordinance. This is because there are an even number of Council members. In all of the other cities that require a margin greater than 51% to pass an ordinance due to the even number of legislators, the charter requires a larger margin for veto override. To provide a veto and then not require a larger number of legislators to override it seems to be uniquely a San Diegan innovation among American cities.